



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 22 जून, 2017 / 1 आषाढ़, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*D/Shala, the 12<sup>th</sup> June, 2017*

**No: Shram (A) 6-2/2014 (Awards).**— In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

<b>Sr. No.</b>	<b>Ref. No.</b>	<b>Petitioner</b>	<b>Respondent</b>	<b>Date of Award/Order</b>
1.	395/15	Mansha Devi	E.E. HPPWD, Dharampur	28-03-2017
2.	483/15	Lekh Raj	E.E. HPPWD, Dharampur	28-03-2017
3.	534/15	Bhag Mal	E.E. HPPWD, Dharampur	28-03-2017
4.	584/15	Ruma Devi	E.E. HPPWD, Dharampur	28-03-2017
5.	587/15	Shyam Singh	E.E. HPPWD, Dharampur	28-03-2017
6.	588/15	Baldev Singh	E.E. HPPWD, Dharampur	28-03-2017
7.	480/15	Roop Singh	E.E. HPPWD, Dharampur	28-03-2017
8.	591/15	Lal Singh	E.E. HPPWD, Dharampur	28-03-2017
9.	541/5	Krishan Chand	E.E. HPPWD, Dharampur	29-03-2017
10.	544/15	Krishan Chand	E.E. HPPWD, Dharampur	29-03-2017
11.	546/15	Nokhi Devi	E.E. HPPWD, Dharampur	29-03-2017
12.	539/15	Raj Kumar	E.E. HPPWD, Dharampur	29-03-2017
13.	543/15	Shyam Lal	E.E. HPPWD, Dharampur	29-03-2017
14.	536/15	Sumfali Devi	E.E. HPPWD, Dharampur	29-03-2017
15.	100/16	Parwati Devi	E.E. HPPWD, Dharampur	31-03-2017
16.	48/16	Kamal Raj	E.E. HPPWD, Dharampur	31-03-2017
17.	481/15	Sher Singh	E.E. HPPWD, Dharampur	31-03-2017
18.	589/15	Manohar Lal	E.E. HPPWD, Dharampur	31-03-2017

By order,  
R.D. DHIMAN, IAS  
*Pr. Secretary (Lab. & Emp.).*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 395/2015**

**Date of Institution : 10.09.2015**

**Date of Decision : 28.03.2017**

Smt. Mansha Devi w/o Shri Hem Singh, r/o Village Dhawali, P.O. Hyun, Tehsil Sarkaghat,  
District Mandi, H.P. ....*Petitioner.*

*Versus*

'Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947.**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Mansha Devi w/o Shri Hem Singh, r/o Village Dhawali, P.O. Hyun, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 23.03.2013 regarding her alleged illegal termination of services during October, 1999 suffers from delay and latches? If not, Whether termination of services of Smt. Mansha Devi w/o Shri Hem Singh, r/o Village Dhawali, P.O. Hyun, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during October, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of April, 1999 where she continued to work upto October, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the month of October, 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from that between 1999 to 2005 respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute vide demand notice dated 23.03.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary

action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3041/2015 which had been decided on 7.7.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* October, 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 04/1999 and she intermittently worked upto October, 1999. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 23-03-2013 qua her termination of service during October, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during October, 1999 is/was illegal and unjustified as alleged? ...*OPP*.

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
4. Whether the claim petition is not maintainable in the present form? ...*OPR*.
- Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—
- Issue No.1 : Discussed
- Issue No.2 : Yes
- Issue No.3 : Discussed
- Issue No.4 : No
- Relief. : Petition is partly allowed awarding compensation Rs.25,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* April, 1999 on muster roll basis as beldar who continued to work till October, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 8 days in month of April 1999, 29 days in May, 1999, 30 days in June 1999, 27 days in July 1999, 31 days in August 1999, 20 days in September 1999 and 2 days in October 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 147 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in the month of October, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 2000 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after October, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that

respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **five months** who was female non-skilled worker ageing 46 years when her services were terminated and not likely to get government job at this age and had worked for 147 days when she was about to complete 240 days entitling her protection under Section 25-F of Industrial Disputes Act and demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28h day of March, 2017.

**(K.K. SHARMA),**

*Presiding Judge,*

*Labour Court-cum-Industrial Tribunal,*

*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 483/2015**

**Date of Institution : 9.11.2015**

**Date of Decision : 28.03.2017**

Shri Lekh Raj s/o Shri Sunder Singh, r/o Village Lawanpur, P.O. Baroti, Tehsil Sarkaghat,  
District Mandi, H.P. ....Petitioner.



*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi,  
H.P. ....Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947.**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Lekh Raj S/O Shri Sunder Singh, R/O Village Lawanpur, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 19.10.2009 regarding his alleged illegal termination of services *w.e.f.* 01.10.2002 suffers from delay and latches? If not, Whether termination of the services of Shri Lekh Raj S/O Shri Sunder Singh, R/O Village Lawanpur, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.10.2002 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 8.12.1998 where he continued to work upto 30.9.2002 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2002 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 11.4.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action.

It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3603/2015 which had been decided on 1.9.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2002 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wage on 7/1998 who intermittently worked upto December, 2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19.10.2009 qua his termination of service *w.e.f.* 01.10.2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP.*
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 01.10.2002 is/was illegal and unjustified as alleged? ... *OPP.*

5. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
6. Whether the claim petition is not maintainable in the present form? ...*OPR*.
- Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—
- Issue No.1 : Discussed
- Issue No.2 : Yes
- Issue No.3 : Discussed
- Issue No.4 : No
- Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

## REASONS FOR FINDINGS

### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2002 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed on daily wage basis by the respondent *w.e.f.* 8.12.1998 on muster roll basis as beldar who continued to work till 30.9.2002 when his services were terminated without any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service whereas service of petitioner were terminated and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 160 days in the year 1998, 327 days in 1999, 324 days in 2000 and 254 ½ days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination, petitioner has factually worked for 324 days in 2000 and 254 ½ days in 2001 prior to termination. Thus, as per mandays chart Ex. RW1/B that petitioner had worked for more than 240 days in the year 2001 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of

the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons appointed later were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned or absented from the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 2001. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Accordingly, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of statement of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. However, when respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service and thus rights of petitioner were jeopardized and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has also been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers to petitioner or employees. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted establishing violation of Section 25-G of the Industrial Disputes Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after December, 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 19.10.2009 after about 8 years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was

not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. Ld. AR for claimant/petitioner has relied upon in judgment of **2014 LLR 967** of Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case having different facts rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on December, 2001 as per mandays chart however the industrial dispute was raised after several years of retrenchment as has come in the evidence on record. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **four years** who was non-skilled worker ageing 37 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 1065 days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 10 years by the petitioner, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2017.

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

#### IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

**Ref No. :** 534/2015  
**Date of Institution :** 04.12.2015  
**Date of Decision :** 28.03.2017

Shri Bhag Mal s/o Shri Dyal Ram, r/o Village Kumharda, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. ....Petitioner.

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi,  
H.P. ...Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947.**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Bhag Mal s/o Shri Dyal Ram, r/o Village Kumharda, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 22.1.2013 regarding his alleged illegal termination of services during year, 2001 suffers from delay and latches? If not, Whether termination of services P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during year, 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 22.1.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to

appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3603/2015 which had been decided on 01.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 03/1999 and he intermittently worked upto April, 1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 22-01-2013 qua his termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*
2. Whether termination of services of the petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? ...*OPP.*
7. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*



8. Whether the claim petition is not maintainable in the present form? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.30,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1998 on muster roll basis as beldar who continued to work till 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 23 days in the month of March, 1999 and 26 days in April, 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 49 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice

or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after April, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Machenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the year 1999 as per mandays chart on record and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for 49 days in **two months** who was non-skilled worker ageing 36 years when his services were terminated and not likely to get government job at this age although not entitled for protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 12 years by the petitioner, a lump-sum compensation of Rs.30,000/- (Rupees thirty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation

shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No.: 584/2015**

**Date of Institution : 19.12.2015**

**Date of Decision : 28.03.2017**

Smt. Ruma Devi w/o Shri Narain Singh, r/o Village Jangel, P.O. Kot, Tehsil Sarkaghat,  
District Mandi, H.P. ....Petitioner.

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Respondent.

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Ruma Devi w/o Shri Narain Singh, r/o Village Jangel, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 17.06.2013 regarding her alleged illegal termination of services during March, 2000 suffers from delay and latches? If not, Whether termination of services of Smt. Ruma Devi w/o Shri Narain Singh, r/o Village Jangel, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during March, 2000, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1998 where she continued to work upto March, 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the month of March, 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from that between 2000 to 2005 respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute vide demand notice dated 17.06.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made

and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3604/2015 which had been decided on 1.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* March, 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 and she intermittently worked upto March, 2000. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 17-06-2013 qua her termination of service during March, 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during March, 2000 is/was illegal and unjustified as alleged? ...*OPP*.
9. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

10. Whether the claim petition is not maintainable in the present form?

...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.60,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 2000 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* November, 1998 on muster roll basis as beldar who continued to work till March, 2000 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 18 days in month of November 1998, 31 days in December 1998, 31 days in January 1999, 19 days in February 1999 and 21 days in March 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 110 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice

or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 2000 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas



the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on March, 1999 as per mandays chart and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **five months** who was female non-skilled worker ageing 53 years when her services were terminated and not likely to get government job at this age and had worked for 110 days when she was about to complete 240 days entitling her protection under Section 25-F of Industrial Disputes

Act and demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.60,000/- (Rupees sixty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2017.

**(K.K. SHARMA)**

*Presiding Judge,*

*Labour Court-cum-Industrial Tribunal,*

*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 587/2015**

**Date of Institution : 19.12.2015**

**Date of Decision : 28.03.2017**

Shri Shyam Singh s/o Shri Gulab Singh, r/o Village Sakhran, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947.**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Shyam Singh s/o Shri Gulab Singh, r/o Village Sakhran, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 22.1.2013 regarding his alleged illegal termination of services during March, 2002 suffers from delay and latches? If not, Whether termination of services of Shri Shyam Singh s/o Shri Gulab Singh, r/o Village Sakhran, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during March, 2002 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of September, 1998 where he continued to work upto March, 2002 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 2002 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 22.1.2013 copy of the same was forwarded to Labour Officer, Mandi for

further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3612/2015 which had been decided on 01.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2002 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 09/1998 and he intermittently worked upto October, 1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 22-01-2013 qua his termination of service during March, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during March, 2002 is/was illegal and unjustified as alleged? ...*OPP*.

11. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

12. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.70,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2002 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of September, 1998 on muster roll basis as beldar who continued to work till March, 2002 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 22 days in the month of September 1998, 32 days in October 1998, 28 days in January 1999, 14 days in February 1999, 18 days in March 1999, 16 days in April 1999, 14 days in May 1999, 06 days in June 1999, 29 days in July 1999, 21 days in August 1999, 25 days in September 1999 and 15 days in October 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 75 days in the year 1998 and 186 days in 1999 and not 240 days in preceding 12 calendar months from the date of his termination and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act. 15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Machenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join

is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the year 1999 as per mandays chart on record and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for 261 days in **thirteen months** was non-skilled worker ageing 38 years when his services were terminated and not likely to get government job at this age although not entitled for protection

under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 11 years by the petitioner, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. :** 588/2015  
**Date of Institution :** 19.12.2015  
**Date of Decision :** 28.03.2017

Shri Baldev Singh s/o Shri Gorkhu Ram, r/o Village Khadun, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. ....Petitioner.



*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Districtn Mandi,  
H.P. ....Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Baldev Singh s/o Shri Gorkhu Ram, r/o Village Khadun, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 18-05-2010 regarding his alleged illegal termination of services w.e.f. 09-02-2004 suffers from delay and latches? If not, Whether termination of the services of Shri Baldev Singh s/o Shri Gorkhu Ram, r/o Village Khadun, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. w.e.f. 09-02-2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1998 where he continued to work upto 8.2.2004 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2004 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Subhash Chand, Shasi Kant, Bidhi Chand, Dharampal, Inder Singh, Ajay Kumar and Smt. Roshani Devi had been retained in service whereas the services of petitioner had been dispensed with. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 18.5.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4163/2015 which had been decided on 15.10.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight

years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2004 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto February, 2004. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed. 5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, retrenchment notice Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 18.5.2010 qua his termination of service *w.e.f.* 9.2.2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 01.10.2002 is/was illegal and unjustified as alleged? ...*OPP.*
13. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP.*
14. Whether the claim petition is not maintainable in the present form? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

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Issue No.2 :	Yes
Issue No.3 :	Discussed
Issue No.4 :	No
Relief. :	Petition is partly allowed awarding compensation Rs.1,60,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2004 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed on daily wage basis by the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till 8.2.2004 when his services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of 'Last come First go' was not followed as S/Sh. Subhash Chand, Shasi Kant, Bidhi Chand, Dharampal, Inder Singh, Ajay Kumar and Smt. Roshani Devi were retained in service whereas service of petitioner were terminated and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 55 days in the year 1998, 254 ½ days in 1999, 281 days in 2000, 282 ½ days in 2001, 253 ½ days in 2002, 249 days in 2004 and 164 days in 2004 aggregating to more than 240 days. Even if we look at the mandays chart, this would show that immediately preceding his termination, petitioner has factually worked for 249 days in 2003 and 164 days in 2004 prior to termination. Thus, as per mandays chart Ex. RW1/B petitioner had worked for more than 240 days immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 3 of affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons appointed later were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned or absented from the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to

join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Accordingly, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of statement of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2004 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. However, when respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service and thus rights of petitioner were jeopardized and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has also been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers to petitioner or employees. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted establishing violation of Section 25-G of the Industrial Disputes Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 2004 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 18.5.2010 after about 6 years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2

lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. **Ld. Dy. D.A. for State** has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. **Ld. AR** for claimant/petitioner has relied upon in judgment of **2014 LLR 967** of Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by **ld. counsel/Authorized Representative** for petitioner does not apply to present case having different facts rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. **Ld. counsel** representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 2004 as per mandays chart however the industrial dispute was raised after several years of retrenchment as has come in the evidence on record. Repudiating the argument by **ld. counsel**, **ld. AR** for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **seven years** who was non-skilled worker ageing 38 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 1539 ½ days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 6 years by the petitioner, a lump-sum compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

**ISSUE NO.4**

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

**RELIEF**

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 480/2015**

**Date of Institution : 09.11.2015**

**Date of Decision : 28.03.2017**

Shri Roop Singh s/o Shri Saran Ram, r/o Village Ban, P.O. Chimnu, Tehsil Joginder Nagbar, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
 : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Roop Singh S/O Shri Saran Ram, R/O Village Ban, P.O. Chimnu, Tehsil Joginder Nagar, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 19-02-2013 regarding his alleged illegal termination of services during September, 1999 suffers from delay and latches? If not, Whether termination of services of Shri Roop Singh S/O Shri Saran Ram, R/O Village Ban, P.O. Chimnu, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during September, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* December, 1998 where he continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as „the Act“ for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 19.2.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3587/2015 which had been decided on 31.8.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The

petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 and he intermittently worked upto August, 1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19-02-2013 qua his termination of service during September, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP.*
2. Whether termination of services of the petitioner by the respondent during September, 1999 is/was illegal and unjustified as alleged? ...*OPP.*
15. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
16. Whether the claim petition is not maintainable in the present form? ...*OPR.*

Relief.



9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.70,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* December, 1998 on muster roll basis as beldar who continued to work till September, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 18 days in the month of December, 1998, 31 days in January, 1999, 23 days in February 1999, 27 days in March 1999, 24 days in April 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 219 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof. 13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to

join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and**

**Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for 219 days in **nine months** who was non-skilled worker ageing 44 years when his services were terminated and not likely to get government job at this age although not entitled for protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 12½ years by the petitioner, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

**ISSUE NO.4**

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

**RELIEF**

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. :** 591/2015

**Date of Institution :** 19.12.2015

**Date of Decision :** 28.03.2017

Shri Lal Singh s/o Shri Paras Ram, r/o Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Lal Singh S/O Shri Paras Ram, R/O Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 22.01.2013 regarding his alleged illegal termination of services during year, 2003 suffers from delay and latches? If not, Whether termination of the services of Shri Lal Singh S/O Shri Paras Ram, R/O Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. during year, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of October, 1999 where he continued to work upto the year 2003 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2003 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 22.1.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3615/2015 which had been decided on 1.9.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2003

without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1998 who intermittently worked upto September, 2000. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 22-01-2013 qua his termination of service during year, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during year, 2003 is/was illegal and unjustified as alleged? ... *OPP*.
17. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP*.
18. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2003 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed on daily wage basis by the respondent in the month of October, 1998 on muster roll basis as beldar who continued to work till 2003 when his services were terminated without any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service whereas service of petitioner were terminated and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 29 days in the month of December 1998, 299 days in 1999 and 229 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination, petitioner has factually worked for 299 days in 1999 and 229 days in 2000 prior to termination. Thus, as per mandays chart Ex. RW1/B that petitioner had worked for more than 240 days ever since January, 1999 till September, 2000 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons appointed later were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned or absented from the job, no notice had been issued. RW1 specifically admitted that no

departmental inquiry was initiated against petitioner even after September, 2000. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Accordingly, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of statement of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. However, when respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service and thus rights of petitioner were jeopardized and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has also been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers to petitioner or employees. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted establishing violation of Section 25-G of the Industrial Disputes Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 22.1.2013 after about 12 years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur**



**& Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. Ld. AR for claimant/petitioner has relied upon in judgment of **2014 LLR 967** of Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/ Authorized Representative for petitioner does not apply to present case having different facts rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 2000 as per mandays chart however the industrial dispute was raised after several years of retrenchment as has come in the evidence on record. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **two years** who was non-skilled worker ageing 45 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 557 days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 10 years by the petitioner, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

**ISSUE NO.4**

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

**RELIEF**

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms. 23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2017.

**(K.K. SHARMA),**

*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 541/2015**

**Date of Institution : 04.12.2015**

**Date of Decision : 29.03.2017**

Shri Krishan Chand s/o Shri Chaudhary Ram, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Krishan Chand S/O Shri Chaudhary Ram, R/O Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 22-01-2013 regarding his alleged illegal termination of services during year, 2001 suffers from delay and latches? If not, Whether termination of services of Shri Krishan Chand S/O Shri Chaudhary Ram, R/O Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. during year, 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1999 where he continued to work upto the year 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as „the Act“ for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 22.1.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3602/2015 which had been decided on 31.8.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the

delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 03/1999 who intermittently worked upto December, 1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 22-01-2013 qua his termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? ...*OPP*.
19. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
20. Whether the claim petition is not maintainable in the present form? ...*OPR*.  
Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,00,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of December, 2000 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of March, 1999 on muster roll basis as beldar who continued to work till December, 2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 23 days in the month of March, 1998, 26 days in April, 1999, 31 days in May 1999, 28 days in June 1999, 27 days in July 1999, 29 days in August 1999, 30 days in September 1999, 28 days in October, 1999, 30 days in November 1999, 31 days in December, 1999, 31 days in January, 2000, 29 days in February 2000, 28 days in March 2000, 25 days in April 2000, 31 days in May 2000, 25 days in June 2000, 27 days in July 2000, 24 days in August, 2000, 30 days in September 2000, 26 days in October 2000, 30 days in November 2000 and 25 days in December 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination, petitioner has factually worked for 283 days in 1999 and 331 days in 2000 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since March, 1999 till December, 2000 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 2000. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after December, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 22.1.2013 after about 12 years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman.

Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on December, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **one year and 10 months** who was non-skilled worker ageing 48 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 614 days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be

entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 544/2015**

**Date of Institution : 04.12.2015**

**Date of Decision : 29.03.2017**

Shri Krishan Chand s/o Shri Fiduram, r/o Village Sakrain, P.O. Tanahad, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*



**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
                               : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial disputes raised by the worker Shri Krishan Chand S/O Shri Fiduram, R/O Village Sakrain, P.O. Tanehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 19.10.2009 regarding his alleged illegal termination of service w.e.f. 01.08.2000 suffers from delay and laches? If not, Whether termination of the Shri Krishan Chand S/o Shri Fiduram, R/O Village Sakrain, P.O. Tanehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. w.e.f. 01.08.2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified. If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 5.7.1998 where he continued to work upto 31.7.2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order w.e.f. 31.7.2000 without one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999) and Roshani Devi (4.7.1999) had been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 19.10.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4115/2015 which had been decided on 14.10.2015 directing the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and

moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 08/1998 who intermittently worked upto September, 1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19-10-2009 qua his termination of service *w.e.f.* 01.8.2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 01.8.2000 is/was illegal and unjustified as alleged? ...*OPP'*
21. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

22. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.70,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order *w.e.f.* 1.8.2000 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* 5.7.1998 on muster roll basis as beldar who continued to work till 31.7.2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 27 days in the month of August 1998, 30 days in September 1998, 31 days in October, 1998, 22 days in November 1998, 31 days in December 1998, 31 days in January 1999, 21 days in February 1999, 26 days in March 1999, 23 days in April 1999, 31 days in May 1999, 30 days in June 1999, 31 days in July 1999, 30 days in August 1999 and 30 days in September 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination, petitioner has factually worked for 141 days in 1998 and 253 days in 1999 aggregating to 394 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since October 1998 till September, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 19.10.2009 after about eight years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor**

**Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- in lieu of reinstatement and consequential benefit to a retrenched employer who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **fourteen months** who was non-skilled worker ageing 39 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 394 days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as

other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

\_\_\_\_\_  
**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 546/2015**

**Date of Institution : 04.12.2015**

**Date of Decision : 29.03.2017**

Smt. Nokhi Devi w/o Shri Sawaroo Ram, r/o Village Banehardi, P.O. Peahad, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Respondent.

### **Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### **AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Nokhi Devi W/O Shri Sawaroo Ram, R/O Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 07-08-2013 regarding her alleged illegal termination of services during September, 1999 suffers from delay and latches? If not, Whether termination of services of Smt. Nokhi Devi W/O Shri Sawaroo Ram, R/O Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during September, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 1.1.1999 where she continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) had been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 7.8.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who

submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3613/2015 which had been decided on 1.9.2015 directing the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month September, 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 who intermittently worked upto September, 1999. It is alleged that petitioner has abandoned job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 7.8.2013 qua her termination of service during September, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during Septe, 1999 is/was illegal and unjustified as alleged? ...*OPP*.



23. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

24. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of September, 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 29 days in the month of January 1999, 24 days in February 1999, 29 days in March 1999, 26 days in April 1999, 31 days in May 1999, 30 days in June 1999, 19 days in July 1999, 31 days in August 1999 and 30 days in September 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination, petitioner has factually worked for 249 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since January, 1999 till September, 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj

& Satya Devi had been appointed in 1998 to 1999 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 19.2.2013 after about 13 years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination petitioner was

not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefit to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **nine months** who was non-skilled worker ageing 41 years when her services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 249 days when she had already completed 240 days entitling her protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 14 years by the petitioner, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 539/2015**

**Date of Institution : 04.12.2015**

**Date of Decision : 29.03.2017**

Shri Raj Kumar s/o late Shri Panjku Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Raj Kumar S/O Late Shri Panjku Ram, R/O Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 19.02.2013 regarding his alleged illegal termination of services during December, 1999 suffers from delay and latches? If not, Whether termination of services of Shri Raj Kumar S/O Late Shri Panjku Ram, R/O Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during December, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1999 where he continued to work upto the year 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) had been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department whose names were Mamta Devi on

6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 19.2.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3600/2015 which had been decided on 31.8.2015 directing the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. had condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 03/1999 who intermittently worked upto December, 1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19-02-2013 qua his termination of service during December, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.

2. Whether termination of services of the petitioner by the respondent during December, 1999 is/was illegal and unjustified as alleged? ... *OPP*.

If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

25. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of December, 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of March, 1999 on muster roll basis as beldar who continued to work till December, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that

petitioner had worked for 22 days in the month of March, 1999, 18 ½ days in April, 1999, 31 days in May, 1999, 26 days in June, 1999, 27 days in July, 1999, 31 days in August, 1999, 30 days in September, 1999, 28 days in October, 1999, 30 days in November, 1999 and 31 days in December, 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination, petitioner has factually worked for 274 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since March, 1999 till December, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment and that persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after December, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no



adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 19.2.2013 after about 13 years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefit to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on December, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even

longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **ten months** who was non-skilled worker ageing 36 years when his services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 274 ½ days when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2017.

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. :** 543/2015

**Date of Institution :** 04.12.2015

**Date of Decision :** 29.03.2017

Shri Shyam Lal s/o Shri Beli Ram, r/o Village Trembla, P.O. Longni, Tehsil Sarkaghat,  
District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi,  
H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Shyam Lal S/O Shri Beli Ram, R/O Village Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vice demand notice dated 27.01.2010 regarding his alleged illegal termination of service *w.e.f.* 08.07.2005 suffers from delay and latches? If not, Whether termination of the Shri Shyam Lal S/O Shri Beli Ram, R/O Village Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *w.e.f.* 08.07.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 11/1998 where he continued to work upto 7.7.2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2005 without prior one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as

some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Mamta Devi (6.4.1999), Roshani Devi (4.7.1999), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) had been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 27.1.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3599/2015 which had been decided on 31.8.2015 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 who intermittently worked upto 8.7.2005. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copy of notice dated 4.7.2005 Ex. RW1/C and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 27-01-2010 qua his termination of service *w.e.f.* 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 8.7.2005 is/was illegal and unjustified as alleged? ...*OPP.*
26. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
27. Whether the claim petition is not maintainable in the present form? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.2,00,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of July, 2005 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who

continued to work till 7.7.2005 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of „Last come First go“ was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 335 days in the year 1999, 329 days in 2000, 311 days in 2001, 304 days in 2002, 312 days in 2003, 250 days in 2004 and 86 days in 2005. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2005, petitioner has factually worked for 250 days in 2004 and 86 days in 2005 aggregating to 336 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since January, 1999 till July, 2005 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2005 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 27.1.2010 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 8.7.2005 and the industrial dispute was raised

after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service for **seven years** who was non-skilled worker ageing 56 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 1927 days in seven years when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 4 ½ years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.2,00,000/- (Rupees two lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.2,00,000/- (Rupees two lakh only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2017.

**(K.K. SHARMA)**

*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*



**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. :** 536/2015

**Date of Institution :** 04.12.2015

**Date of Decision :** 29.03.2017

Smt. Sumfali Devi w/o Shri Sukh Ram, r/o Village Konsal, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Sumfali Devi W/O Shri Sukh Ram, R/O Village Konsal, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 02.02.2013 regarding her alleged illegal termination of services during year, 2000 suffers from delay and latches? If not, Whether termination of services of Smt. Sumfali Devi W/O Shri Sukh Ram, R/O Village Konsal, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during year, 2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* November, 1998 where she continued to work upto the year 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department

had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) had been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 11.4.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3603/2015 which had been decided on 1.9.2015 directing the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. had condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 who intermittently worked upto September, 1999. It is alleged that petitioner has abandoned job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant. Smt. Neelam Kumari, Clerk in the office of The E.E. HPPWD Hamirpur examined as PW2 tendered/proved Ex. P1 copy of regular appointment order of Sanjay Kumar and mandays chart of Ex. P2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 2.2.2013 qua her termination of service during year 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*
2. Whether termination of services of the petitioner by the respondent during year, 2000 is/was illegal and unjustified as alleged? ...*OPP.*
28. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
29. Whether the claim petition is not maintainable in the present form? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

### **REASONS FOR FINDINGS**

#### **ISSUES NO.1 TO 3**

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of January, 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who

continued to work till September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 29 days in the month of January 1999, 22 days in February 1999, 27 days in March 1999, 26 days in April 1999, 31 days in May 1999, 26 days in June 1999, 27 days in July 1999, 24 days in August 1999 and 30 days in September 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination, petitioner has factually worked for 242 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since January, 1999 till September, 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 1998 to 1999 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed between 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Machenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided

seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 2.2.2013 after about 13 years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination petitioner was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefit to a retrenched employer who had issued notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of judgment above stated and that petitioner had rendered service only for **nine months** who was non-skilled worker ageing 45 years when her services were illegally terminated without notice and not likely to get government job at this age and had factually worked for 242 days when she had already completed 240 days entitling her protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 100/2016**

**Date of Institution : 4.03.2016**

**Date of Decision : 31.03.2017**

Smt. Parwati Devi w/o Shri Purshotam, r/o Village Banjal (Langehar), P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Parwati Devi W/O Shri Purshotam, R/O Village Banjal (Langehar), P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 16.8.2011 regarding her alleged illegal termination of service w.e.f. 08.7.2005 suffers from delay and laches? If not, Whether termination of the services of Smt. Parwati Devi W/O Shri Purshotam, R/O Village Banjal (Langehar), P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 11/1998 where she continued to work upto 7.7.2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide order 4.7.2005 *w.e.f.* 8.7.2005 with three month's notice pay as well as retrenchment compensation under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Mamta Devi (6.4.1999), Roshani Devi (4.7.1999), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 16.8.2011 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.3504/2015 which had been decided on 24.8.2015 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 2003 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 3/1999 who intermittently worked upto 7.7.2005. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of retrenchment notice Ex. PW1/E, copy of office order Ex. PW1/F, copy of judgment dated 24.8.2015 Ex. PW1/G, copy of birth certificate Ex. PW1/H, copy of mandays chart



of petitioner Ex. PW1/I and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 22.12.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 16.8.2011 qua her termination of service *w.e.f.* 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 8.7.2005 is/was illegal and unjustified as alleged? ...*OPP.*
30. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
31. Whether the claim petition is not maintainable in the present form? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,20,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* 8.7.2005 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case

may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1998 on muster roll basis as beldar who continued to work till 8.7.2005 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 243 days in the year 1999, 348 days in 2000, 321 ½ days in 2001, 338 days in 2002, 339 days in 2003, 259 days in 2004 and 118 days in 2005. Even if we look at the mandays chart, this would show that immediately preceding her termination in 2005, petitioner has factually worked for 259 days in 2004 and 118 days in 2005 aggregating to more than 240 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since March, 1999 till July, 2005 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2005 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers

mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 16.8.2011 after about six years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on July, 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of aforesaid judgment above stated and that petitioner had rendered total service for **seven years** who was non-skilled worker ageing 60 years when her services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 1966 ½ days in seven years when she had already completed 240 days entitling her protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of six years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2017.

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 48/2016**

**Date of Institution : 20.02.2016**

**Date of Decision : 31.03.2017**

Shri Kamal Raj s/o Shri Khem Chand, r/o Village Chapanu, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Petitioner.

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Kamal Raj S/o Shri Khem Chand, R/O Village Chapanu, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.d.Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. vide demand notice dated 30.4.2010 regarding his alleged illegal termination of service during year, 2000 suffers from delay and latches? If not, Whether termination of the services of Shri Kamal Raj S/O Shri Kehm Chand, R/O Village Chapanu, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during year, 2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in 1999 where he continued to work upto 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in theyear 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 30.4.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4310/2015 which had been decided on 16.11.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 4/1999 and that he intermittently worked upto September, 1999. It is alleged that petitioner had left the job of his own who had not even completed 240 days in each calendar year. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal termination by respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute creating doubt on genuineness of his claim. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent and therefore alleges that question of termination of the services of petitioner by the respondent did not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated

13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 30.4.2010 qua his termination of service during year 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during year 2000 is/was illegal and unjustified as alleged? ...*OPP*.
32. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
33. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.30,000/- per operative part of award.

### **REASONS FOR FINDINGS**

#### **ISSUES NO.1 TO 3**

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by

the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year April, 1999 on muster roll basis as beldar who continued to work till September, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 156 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 156 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of**



**claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Industrial Disputes Act.**

15. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. and too on compassionate grounds. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. As such, even when petitioner is proved to have not worked for more than 240 days in preceding one year, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

16. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in any type of job and cross-examination of PW1 reveals that he had not been engaged in cultivation of his land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act.

17. Ld. Authorized Representative/counsel for petitioner has placed reliance on judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

18. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past

30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

19. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Applying the ratio of judgment above stated and that petitioner had rendered service only for 156 days in a year who was non-skilled worker ageing 40 years when his services were terminated and not likely to get government job at this age although not entitled for protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 10 years by the petitioner, a lump-sum compensation of Rs.30,000/- (Rupees thirty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 481/2015**

**Date of Institution : 09.11.2015**

**Date of Decision : 31.03.2017**

Shri Sher Singh s/o Shri Sohata Ram, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Sher Singh s/o Shri Sohata Ram, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 17-06-2013 regarding his alleged illegal termination of services during March, 1999 suffers from delay and latches? If not, Whether termination of services of Shri Sher Singh s/o Shri Sohata Ram, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during March, 1999, without complying the provisions of the Industrial Disputes Act,

1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* December, 1998 where he continued to work upto March, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute vide demand notice dated 27.6.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government i.e. Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3587/2015 which had been decided on 31.8.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1998 and that he intermittently worked upto March, 1999. It is alleged that petitioner had left the job of his own who had not even completed 240 days in each calendar year. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal termination by respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute creating doubt on genuineness of his claim. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent and therefore alleges that question of termination of the services of petitioner by the respondent did not arise. Delay in

filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 17-06-2013 qua his termination of service during March, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during March, 1999 is/was illegal and unjustified as alleged? ...*OPP*.
34. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
35. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.20,000/- per operative part of award.

## REASONS FOR FINDINGS

### ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. December, 1998 on muster roll basis as beldar who continued to work till March, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 23 days in the year 1998 and 65 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 88 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after March, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford

opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Industrial Disputes Act.**

15. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. and too on compassionate grounds. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. As such, even when petitioner is proved to have not worked for more than 240 days in preceding one year, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

16. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in any type of job and cross-examination of PW1 reveals that he had not been engaged in cultivation of his land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act.

17. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

18. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

19. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on March, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Applying the ratio of judgment above stated and that petitioner had rendered service only for 88 days in **two years** who was non-skilled worker ageing 42 years when his services were terminated and not likely to get government job at this age although not entitled for protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 13 years by the petitioner, a lump-sum compensation of Rs.20,000/- (Rupees twenty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE NO.4

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

#### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the



said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs. 23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2017.

**(K.K. SHARMA),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

**Ref No. : 589/2015**

**Date of Institution : 19.12.2015**

**Date of Decision : 31.03.2017**

Shri Manohar Lal s/o Shri Daulat Ram, r/o Village Richhi, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. *....Petitioner.*

*Versus*

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *....Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Manohar Lal s/o Shri Daulat Ram, r/o Village Richhi, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. vide demand notice dated 02.9.2010 regarding alleged illegal termination of his services during March, 2003 suffers from delay and latches? If not, Whether termination of services of Shri Manohar Lal s/o Shri Daulat Ram, r/o Village Richhi, P.O. Dhawali, Tehsil Sarkaghat,

District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during March, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 1.12.1998 where he continued to work upto March, 2003 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2003 without prior one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services without valid reason of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Mamta Devi (6.4.1999), Roshani Devi (4.7.1999), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 2.9.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.4114/2015 which had been decided on 14.10.2015 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 2003 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1998 who intermittently worked upto October, 2000. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the

question of any illegal act of respondent does not arise. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. It is alleged that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposal of this case.

8. From the contentions raised, following issues were framed on 05.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02-09-2010 qua his termination of service during March, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during March, 2003 is/was illegal and unjustified as alleged? ...*OPP*.
36. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
37. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

**REASONS FOR FINDINGS****ISSUES NO.1 TO 3**

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of March, 2003 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1998 on muster roll basis as beldar who continued to work till March, 2003 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of „Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 31 days in the year 1998, 340½ days in 1999 and 295½ days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2000, petitioner has factually worked for 340½ days in 1999 and 295 ½ days in 2000 aggregating to 636 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since January, 1999 till October, 2000 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2000. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been

retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after March, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after October, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 2.9.2010 after about six years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning moreso when he himself admitted in cross-examination that he had cultivable land and also earned by working as labourer. It is maintained if, he did not get any government job however petitioner has revealed in cross-examination that he had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service,

the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Applying the ratio of aforesaid judgment above stated and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 38 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 667 days in three years when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of six years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

#### ISSUE No 4

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

**RELIEF**

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2017.

(K.K. SHARMA),  
Presiding Judge, Labour  
Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**LABOUR & EMPLOYMENT DEPARTMENT****NOTIFICATION**

*Shimla-171001, the 20<sup>th</sup> January, 2016*

**No. 11-5/99(Lab) ID/2015-Chamba.**—Whereas Ms. Shakuntla Devi D/O Shri Tek Chand, R/O Village Pregram, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. had raised a demand notice dated 31.8.2012 regarding her illegal termination from the services by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. The Labour Officer-cum-Conciliation Officer, Chamba, District Chamba, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, H.P.;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Chamba, District Chamba, H.P. was considered, examined and Labour Commissioner, H.P. as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 10 years and therefore declined the reference of the dispute vide order dated 30.4.2014;

And whereas Ms. Shakuntla Devi D/O Shri Tek Chand agitated the above orders of declining of reference of her industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide C.W.P. No. 4395/2015. The Hon'ble High Court of Himachal Pradesh has disposed off the civil writ petition on 21.11.2015 and directed the respondent to make reference to the Industrial Tribunal-cum-Labour Court within four weeks. The operative part of the judgment is reproduced as follows;

*“4 Accordingly, the writ petition is allowed. Annexure PB dated 30.4.2014 is quashed and set aside. The Labour Commissioner is directed to make reference to the Labour Court-cum*

*Industrial Tribunal within a period of four weeks from today and the Labour Court-cum-Industrial Tribunal shall decide the same within a period of six months after the receipt of reference. Pending application(s), if any, also stands disposed of. No costs."*

Therefore, in view of above the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No. Shram(A)4-9/2006- IV-Loose, Dated 15<sup>th</sup> February, 2014 and as per power vested under Sub Section-1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court-cum Industrial Tribunal, Dharamsala, constituted under Section-7 of Act *ibid*, on the following issue/issues for legal adjudication;

"Whether the industrial dispute raised by the worker Ms. Shakuntla Devi D/O Shri Tek Chand, R/O Village Pregram, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 31.8.2012 regarding her alleged illegal termination of service during October, 2001 suffers from delay and laches? If not, Whether termination of the services of Ms. Shakuntla Devi D/O Shri Tek Chand, R/O Village Pregram, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

By order,  
Sd/-

*Deputy Labour Commissioner.*

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 11<sup>th</sup> February, 2016*

**No. 11-5/99(Lab) ID/2015-Chamba.**—Whereas Smt. Shanti Devi W/O Shri Sher Singh, R/O Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. had raised a demand notice dated 6.10.2011 regarding her illegal termination from the services by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. The Labour Officer-cum- Conciliation Officer, Chamba, District Chamba, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, H.P.;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Chamba, District Chamba, H.P. was considered, examined and Labour Commissioner, H.P. as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 13years and therefore declined the reference of the dispute vide order dated 30.04.2014;

And whereas Smt. Shanti Devi W/O Shri Sher Singh agitated the above orders of declining of reference of her industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide C.W.P. No. 4252/2015. The Hon'ble High Court of Himachal Pradesh has



disposed off the civil writ petition on 26.10.2015 and directed the respondents to consider the case of the petitioners, in terms of the judgment dated 30<sup>th</sup> December, 2014 case titled Pratap Chand versus Himachal Pradesh State Electricity Board and others, being the lead case within eight weeks. The operative part of the judgment is reproduced as follows;

“3 In the given circumstances, we deem it proper to direct the respondents to consider the case of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.

4. The writ petition are disposed of accordingly, alongwith pending application, if any.”

Therefore, in view of above the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No. Shram(A)4-9/2006- IV-Loose, Dated 15<sup>th</sup> February, 2014 and as per power vested under Sub Section-1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court-cum Industrial Tribunal, Dharamsala, constituted under Section-7 of Act ibid, on the following issue/issues for legal adjudication;

“Whether the industrial dispute raised by the worker Smt. Shanti Devi W/O Shri Sher Singh, R/O Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 6.10.2011 regarding her alleged illegal termination of service during November, 1997 suffers from delay and latches? If not, Whether termination of the services of Smt. Shanti Devi W/O Shri Sher Singh, R/O Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during November, 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

By order,  
Sd/-

Deputy Labour Commissioner.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

Shimla-171001, the 29<sup>th</sup> February, 2016

**No.11-1/95(Lab) I.D./2015-Rampur.**—Whereas Shri Shyamanand S/O Shri Dila Ram, R/O Village Alu Randal, P.O. Rampur, Tehsil Nirmand, District Kullu, H.P. had raised a demand notice dated nil-received in Labour Office, Rampur on 25.9.2013 regarding his illegal termination from the services by (1) The Managing Director, Himachal Pradesh Transport Corporation H.P., Shimla (2) Regional Manager, H.R.T.C., Rampur, District Shimla, H.P. The Labour Officer-cum-Conciliation Officer, Rampur Zone Rampur, District Shimla, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, consequently sent a report as provided in Section 12(4) of the Industrial Disputes Act, 1947 to the appropriate Government;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Rampur Zone Rampur, District Shimla, H.P. was considered and examined by the undersigned vested with the power of appropriate Govt. vide Notification No.:- Shram(A) 4-9/2006-IV-Loose, dated- 15.2.2014 of Govt. of Himachal Pradesh and an opinion is formed as provided u/s 10(1) of the ibid Act that the alleged industrial dispute regarding alleged illegal termination of services was not in existence at the time of submission of demand notice dated-nil-received on 25.9.2013 after a belated stage of more than 12 years and therefore declined the reference of the dispute vide order dated 29.4.2015;

And whereas Shri Shyamanand S/O Shri Dila Ram agitated the above orders of declining of reference of his industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide CWP No. 4160/2015. The Hon'ble High Court of Himachal Pradesh has disposed off the civil writ petition 15.10.2015 and directed the respondents to consider the case of the petitioners, in terms of the judgment dated 30th December, 2014, CWP No. 9467 of 2014 case titled Pratap Chand versus Himachal Pradesh State Electricity Board and others, being the lead case within eight weeks. The operative part of the judgment is reproduced as follows;

*"3 In the given circumstances, we deem it proper to direct the respondents to consider the case of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*

*4. The writ petition are disposed of accordingly, alongwith pending application, if any."*

Therefore, in view of above directions, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No. Shram(A) 4-9/2006-IV-Loose, dated-15.2.2014 and as per power vested under Sub Section-1 of Section 10 of The Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Shimla, constituted under Section-7 of Act ibid, on the following issue/issues for legal adjudication:—

*"Whether alleged termination of services of Shri Shyamanand S/O Shri Dila Ram, R/O Village Alu Randal, P.O. Rampur, Tehsil Nirmand, District Kullu, H.P. w.e.f. 18.4.2001 by the (1) The Managing Director, Himachal Pradesh Transport Corporation H.P., Shimla (2) Regional Manager, H.R.T.C., Rampur, District Shimla, H.P., who had worked as Motor Mechanic only for 191 days during the year, 2000 and has raised his industrial dispute after more than 12 years vide demand notice dated 25.9.2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified ? If not, keeping in view of working period of 191 days during the year, 2000 and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"*

By order,  
Sd/-

*Joint Labour Commissioner.*

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 8<sup>th</sup> March, 2016*

**No. 11-1/7(Lab) ID/2015-Joginder Nagar.**—Whereas Shri Subhash Chand S/O Shri Hari Singh, R/O Village Ruwara, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. had raised a

demand notice dated 17.12.2012 regarding his illegal termination from the services by the Senior Executive Engineer, Electrical Division, HPSEBL., Joginder Nagar, District Mandi, H.P. The Labour Inspector-cum-Conciliation Officer, Joginder Nagar, District Mandi, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, H.P.;

And whereas the report sent by the Labour Inspector-cum-Conciliation Officer, Joginder Nagar, District Mandi, H.P. was considered, examined and a Labour Commissioner, H.P. as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 13 years and therefore declined the reference of the dispute vide order dated 3.12.2013;

And whereas Shri Subhash Chand S/O Shri Hari Singh agitated the above orders of declining of reference of his industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide C.W.P. No. 34/2016. The Hon'ble High Court of Himachal Pradesh has disposed off the civil writ petition on 7.1.2016 and directed the respondents to consider the case of the petitioners, in terms of the judgment, dated 30th December, 2014, delivered by Hon'ble High Court of H.P. in CWP No. 9467 of 2014 case titled Pratap Chand versus Himachal Pradesh State Electricity Board and others within eight weeks. The operative part of the judgment is reproduced as follows;

- “3. In the given circumstances, we deem it proper to direct the respondents to consider the cases of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*
- 4. The writ petitions are disposed of accordingly, alongwith pending applications, if any.”*

Therefore, in view of above the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No. Shram(A)4-9/2006- IV-Loose, Dated 15<sup>th</sup> February, 2014 and as per power vested under Sub Section-1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court-cum Industrial Tribunal, Dharamsala, constituted under Section-7 of Act ibid, on the following issue/issues for legal adjudication;

*“Whether the industrial dispute raised by the worker Shri Subhash Chand S/O Shri Hari Singh, R/O Village Ruwara, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. before the Senior Executive Engineer, Electrical Division, HPSEBL., Joginder Nagar, District Mandi, H.P. vide demand notice dated 17.12.2012 regarding his alleged illegal termination of service w.e.f. 25.03.1999 suffers from delay and laches? If not, Whether termination of the services of Shri Subhash Chand S/O Shri Hari Singh, R/O Village Ruwara, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. by the Senior Executive Engineer, Electrical Division, HPSEBL., Joginder Nagar, District Mandi, H.P. w.e.f. 25.03.1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”*

By order,  
Sd/-

*Deputy Labour Commissioner.*

**LABOUR & EMPLOYMENT DEPARTMENT****CORRIGENDUM***Shimla-171001, the ..... February, 2016*

**No.11-5/99(Lab)I.D./2012-Chamba.**—In partial modification of this Department's Notification of even number dated 25.03.2015, the date of termination of services of workman Shri Sukh Dyal S/O Shri Sher Chand may be read as "August, 2005" instead of "September, 1999".

By order,  
Sd/-  
*Deputy Labour Commissioner.*

**LABOUR & EMPLOYMENT DEPARTMENT****CORRIGENDUM***Shimla-171001, the ..... March, 2016*

**No.11-23/84(Lab)I.D./2013/Mandi.**—In partial modification of this Department's Notification of even number dated 17.01.2015, the date of termination of services of worker Smt. Sukri Devi W/O Shri Sunder Singh, R/O Village Kharoon, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. may be read as "08.07.2005" instead of "09.07.2005".

By order,  
Sd/-  
*Deputy Labour Commissioner.*

**LABOUR & EMPLOYMENT DEPARTMENT****NOTIFICATION***Shimla-171001, the 20<sup>th</sup> January, 2016*

**No. 11-5/99(Lab) ID/2015-Chamba.**—Whereas Smt. Sum Dei W/O Shri Chiri Dass, R/O Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. had raised a demand notice dated 21.5.2012 regarding her illegal termination from the services by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. The Labour Officer-cum-Conciliation Officer, Chamba, District Chamba, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, H.P.;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Chamba, District Chamba, H.P. was considered, examined and Labour Commissioner, H.P. as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 7 years and therefore declined the reference of the dispute vide order dated 30.4.2014;

And whereas Smt. Sum Dei W/O Shri Chiri Dass agitated the above orders of declining of reference of her industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide C.W.P. No. 4394/2015. The Hon'ble High Court of Himachal Pradesh has disposed off the civil writ petition on 21.11.2015 and directed the respondent to make reference to the Industrial Tribunal-cum-Labour Court within four weeks. The operative part of the judgment is reproduced as follows;

*“4 Accordingly, the writ petition is allowed. Annexure PA dated 30.4.2014 is quashed and set aside. The Labour Commissioner is directed to make reference to the Labour Court-cum Industrial Tribunal within a period of four weeks from today and the Labour Court-cum-Industrial Tribunal shall decide the same within a period of six months after the receipt of reference. Pending application(s), if any, also stands disposed of. No costs.”*

Therefore, in view of above the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No. Shram(A)4-9/2006- IV-Loose, Dated 15<sup>th</sup> February, 2014 and as per power vested under Sub Section-1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court-cum Industrial Tribunal, Dharamsala, constituted under Section-7 of Act *ibid*, on the following issue/issues for legal adjudication;

“Whether the industrial dispute raised by the worker Smt. Sum Dei W/O Shri Chiri Dass, R/O Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 21.5.2012 regarding her alleged illegal termination of service during June, 2004 suffers from delay and latches? If not, Whether termination of the services of Smt. Sum Dei W/O Shri Chiri Dass, R/O Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during June, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

By order,  
Sd/-

Deputy Labour Commissioner.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 9<sup>th</sup> March, 2016*

**No. 11-1/7(Lab) ID/2015-Joginder Nagar.**—Whereas Shri Suresh Kumar S/O Shri Sant Ram, R/O Village Konsal, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. had raised a demand notice dated 1.10.2011 regarding his illegal termination from the services by the Resident Engineer, H.P.S.E.B. Bassi Power House, Joginder Nagar, District Mandi, H.P. The Labour Inspectorcum-Conciliation Officer, Mandi, District Mandi, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, H.P.;

And whereas the report sent by the Labour Inspector-cum- Conciliation Officer, Mandi, District Mandi, H.P. was considered, examined and Labour Commissioner, H.P. as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 14 years and therefore declined the reference of the dispute vide order dated 4.9.2013;

And whereas Shri Suresh Kumar S/O Shri Sant Ram agitated the above orders of declining of reference of his industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide C.W.P. No. 37/2016. The Hon'ble High Court of Himachal Pradesh has disposed off the civil writ petition on 7.1.2016 and directed the respondents to consider the case of the petitioners, in terms of the judgment, dated 30th December, 2014, CWP No. 9467 of 2014 case titled Pratap Chand versus Himachal Pradesh State Electricity Board and others within eight weeks. The operative part of the judgment is reproduced as follows;

*"3. In the given circumstances, we deem it proper to direct the respondents to consider the case of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*

*4. The writ petitions is disposed of accordingly, alongwith pending applications, if any."*

Therefore, in view of above the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No. Shram(A)4-9/2006- IV-Loose, Dated 15<sup>th</sup> February, 2014 and as per power vested under Sub Section-1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court-cum Industrial Tribunal, Dharamsala, constituted under Section-7 of Act ibid, on the following issue/issues for legal adjudication;

*"Whether alleged termination of services of Shri Suresh Kumar S/O Shri Sant Ram, R/O Village Konsal, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. 16.12.1996 by the Resident Engineer, H.P.S.E.B. Bassi Power House, Joginder Nagar, District Mandi, H.P., who had worked as beldar during the year, 1996 and has raised his industrial dispute after more than 14 years vide demand notice dated 01.10.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified ? If not, keeping in view of working period during the year, 1996 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"*

By order,  
Sd/-

*Deputy Labour Commissioner.*

## LABOUR & EMPLOYMENT DEPARTMENT

### CORRIGENDUM

*Shimla-171001, the .... March, 2016*

**No.11-23/84(Lab)I.D./2013/Mandi.**—In partial modification of this Department's Notification of even number dated 17.01.2015, the date of termination of services of workman Smt.

Urmila Devi alias Rumla Devi W/O Shri Hari Dass, R/O Village Dhanrasi, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P. may be read as "08.07.2005" instead of "09.07.2005".

By order,  
Sd/-

Deputy Labour Commissioner.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

Shimla-171001, the 17<sup>th</sup> March, 2016

**No. 11-1/7(Lab) ID/2015-Joginder Nagar.**—Whereas Shri Yog Raj S/O Shri Ghesu Ram, R/O Village Hyun, P.O. Urla, Tehsil Padhar, District Mandi, H.P. had raised a demand notice dated 27.12.2012 regarding his illegal termination from the services by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P. The Labour Inspector-cum-Conciliation Officer, Joginder Nagar, District Mandi, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, H.P.;

And whereas the report sent by the Labour Inspector-cum-Conciliation Officer, Joginder Nagar, District Mandi, H.P. was considered, examined and Labour Commissioner, H.P. as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 14 years and therefore declined the reference of the dispute vide order dated 17.1.2014;

And whereas Shri Yog Raj S/O Shri Ghesu Ram agitated the above orders of declining of reference of his industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide C.W.P. No. 117/2016. The Hon'ble High Court of Himachal Pradesh has disposed off the civil writ petition on 22.02.2016 and directed the respondents to consider the case of the petitioners, in terms of the judgment, dated 30th December, 2014, delivered by Hon'ble High Court of H.P. in CWP No. 9467 of 2014 case titled Pratap Chand versus Himachal Pradesh State Electricity Board and others within eight weeks. The operative part of the judgment is reproduced as follows;

- “3. *In the given circumstances, we deem it proper to direct the respondents to consider the cases of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*
4. *The writ petitions are disposed of accordingly, alongwith pending applications, if any.*”

Therefore, in view of above the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No. Shram(A)4-9/2006- IV-Loose, Dated 15<sup>th</sup> February, 2014 and as per power vested under Sub Section-1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court-cum Industrial Tribunal, Dharamsala, constituted under Section-7 of Act ibid, on the following issue/issues for legal adjudication;

“Whether alleged termination of services of Shri Yog Raj S/O Shri Ghesu Ram, R/O Village Hyun, P.O. Urla, Tehsil Padhar, District Mandi, H.P. w.e.f. 25.09.1998 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P., who had worked as beldar on daily wages only for 59 days during years, 1996-98 and has raised his industrial dispute after more than 14 years vide demand notice dated 27.12.2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified ? If not, keeping in view of working period of 59 days during years, 1996-98 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

By order,  
Sd/-

*Deputy Labour Commissioner.*

## PUBLIC WORKS DEPARTMENT

### NOTIFICATION

*Shimla-2 the 20<sup>th</sup> June, 2017*

**No. PBW (B&R) (B)(8)2(1)2000.**—In exercise of the powers conferred by Section-18 of H.P. Aerial Ropeways Act, 1968 (Act No. 7 of 1969) read with rule 7 of the Himachal Pradesh Aerial Rules, 1972, the Governor, Himachal Pradesh is pleased to order to fix the following maximum rates to be charged by the M/S Jagson International Ltd., 3<sup>rd</sup> Floor, Vandna Building, 11 Tolstoy Marg, New Delhi 110001 for working of Jakhu Aerial Ropeways, Shimla from the passengers from the date of issue of this notification, namely:—

Sr. No	Description	Age	Fare one Way	Fare two Way
1.	Adult	Above 12 years	Rs. 300/-	Rs. 550/-
2.	Children	Above 3 years upto 12 years	Rs.250/-	Rs.450/-
3.	Children	upto 3 years	Free	Free

These rates will be applicable with immediate effect.

By order,  
NARINDER CHAUHAN,  
*Additional Chief Secretary(PW).*



## लोक निर्माण विभाग

## अधिसूचना

शिमला-2, 20 जून 2017

**संख्या:पी0बी0डब्ल्यू(बीएण्डआर)(बी)(8)2(1)/2000.**—मैसर्ज जैगसन इंटरनेशनल लिमिटेड, कंपनी अधिनियम, 1956 के उपबधों के अधीन निगमित कंपनी जिसका रजिस्ट्रीकृत कार्यालय तृतीय मंजिल, वन्दना भवन, 11 टॉलस्टाय मार्ग, नई दिल्ली 110001 में है, ने 16 मार्च, 2006 को शिमला में निर्माण, स्वामित्व, परिचालन और अन्तरण ("बी ओ ओ टी") आधार पर शिवालिक होटल से जाखू मंदिर शिमला को आकाशी रज्जूमार्ग के विकास के लिए प्रधान सचिव (पर्यटन), हिमाचल प्रदेश सरकार के माध्यम से राज्यपाल, हिमाचल प्रदेश के साथ रियायत करार किया है;

मैसर्ज जैगसन इंटरनेशनल लिमिटेड कंपनी ने हिमाचल प्रदेश आकाशी रज्जूमार्ग अधिनियम, 1968 की धारा 27 के अधीन उप विधियों का प्रारूप बनाया है और जिसे पूर्वोक्त अधिनियम की धारा 27 (3) के अनुसरण में दो दैनिक समाचार-पत्रों अर्थात्, दी ("बिजनेस स्टैंडर्ड") और "नया इंडिया" में तारीख 29-11-2016 और 04-12-2016 को जन साधारण की जानकारी के लिए प्रकाशित किया गया है;—

और आकाशी रज्जूमार्ग, शिमला के निरीक्षक ने उपरोक्त उपविधियों के प्रारूप की संवीक्षा हिमाचल प्रदेश आकाशी रज्जूमार्ग नियम, 1972 के नियम 12 की अपेक्षा के अनुसार की है और इसे राज्य सरकार को अनुमोदन और राजपत्र में प्रकाशन के लिए अग्रेषित किया है;

अतः राज्यपाल, हिमाचल प्रदेश पूर्वोक्त अधिनियम की धारा 27 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्ज जैगसन इंटरनेशनल लिमिटेड द्वारा बनाई गई निम्नलिखित उप विधियों का अनुमोदन करते हैं, अर्थात्:—

## उप विधियां

**1. संक्षिप्त नाम और प्रारंभ.**—(1) इन उप विधियों का संक्षिप्त नाम जाखू आकाशी रज्जूमार्ग, शिमला उप विधियां, 2017 है ।

(2) ये उपविधियां राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होगी ।

**2. परिभाषाएं.**—(1) इन उपविधियों में, जब तक की विषय या संदर्भ में कोई बात विरुद्ध न हो;

(क) "अधिनियम" से हिमाचल प्रदेश आकाशी रज्जूमार्ग अधिनियम, 1968 (1969 का अधिनियम संख्याक 7) अभिप्रेत है;

(ख) "केबिन" आकाशी रज्जूमार्ग में यात्रियों के वहन के लिए प्रयुक्त वाहक (केरियर) अभिप्रेत है; और जैगसन इंटरनेशनल लिमिटेड, तृतीय मंजिल वन्दना भवन, 11 टॉलस्टाय मार्ग, नई दिल्ली 110001 अभिप्रेत है;

(2) उन ऐसे शब्दों और पदों के जो इन में प्रयुक्त हैं; किन्तु परिभाषित नहीं हैं क्रमशः वही अर्थ होंगे जो अधिनियम और तदधीन बनाए गए नियमों में उनके हैं ।

**(3) विनियमित करने की रीति और अन्य शर्तें.**—आकाशी रज्जूमार्ग को विनियमित करने की रीति और अन्य शर्तें निम्नलिखित प्रकार से होगी:—

(क) आकाशी रज्जूमार्ग को गति चार मीटर प्रति सैकेंड तक होगी । पालतू पशुओं सहित,

(ख) प्रत्येक केबिन में ले जाए जाने वाले यात्रियों, अधिकतम भार 480 किलोग्राम से अधिक नहीं होगा।

(ग) प्रत्येक केबिन में छः व्यस्क व्यक्तियों को ले जाने की अनुमति दी जाएगी।

**स्पष्टीकरण:—**(i) इस उप-विधि के प्रायोजन के लिए तीन वर्ष से अधिक 12 वर्ष तक की आयु के दो बालको/बालिकाओं की गणना, एक वयस्क व्यक्ति के बराबर की जाएगी, जबकि 3 से 12 वर्ष की आयु के बालक/बालिकाओं केविन के बैठने की स्थान द्वारा यथासीमित अधिकतम तक समायोजित किए जाएंगे;

(ii) प्रत्येक केबिन में तीन वर्ष से कम आयु के बालक बालिकाओं गणना, ले जाए जाने वाले अधिकतम यात्रियों की गणना के लिए हिसाब में नहीं ली जाएगी।

(घ) किसी भी व्यक्ति को आकाशी रज्जू मार्ग में यात्रा के दौरान, आयुध अधिनियम, 1959 के अधीन—यथा परिभाषित आयुध और गोला बारूद और मद्यसार/मादक पदार्थ अपने साथ ले जाने की अनुमति नहीं दी जायेगी।

(ङ) आकाशी रज्जू मार्ग में यात्रा के दौरान यात्रियों को खाने, पीने या धूम्रपान करने की अनुमति नहीं दी जाएगी; और

(च) संप्रवर्तक कम्पनी, किसी भी यात्री को केविन में यात्रा करने से रोक सकेगी, यदि कम्पनी का कोई कर्मचारी यह पाता है, कि, कोई व्यक्ति नशे की हालत में है या, अन्यथा शारीरिक या मानसिक रूप से आकाशी रज्जूमार्ग से यात्रा करने के योग्य नहीं है उससे या स्वयं को या सह यात्रियों को या संप्रवर्तक कम्पनी के कर्मचारियों को किसी खतरे की आशंका है।

**4. भारसाधक सेवक:—**भारसाधक सेवक या भारसाधक आकाशी रज्जू की नियुक्ति अधिनियम के उपबन्धों के अधीन ऐसे प्राधिकारी/अधिकारी द्वारा की जा सकेगी, जो ऐसा करने के लिए सक्षम हो।

**5. कर्मचारिवृंद की अर्हताएँ:—**आकाशी रज्जू मार्ग को चलाने और उसके रख-रखाव हेतु नियोजन किए जाने वाले कर्मचारिवृंद और उनकी अर्हताएँ निम्नानुसार होगी:—

- यांत्रिक इंजीनियर:** किसी मान्यता प्राप्त संस्थान/पौलिटैक्निक से यांत्रिक इंजीनियरिंग में कम से कम डिप्लोमा या राज्य/केन्द्रीय सरकार द्वारा मान्यता प्राप्त संस्थान/पौलिटैक्निक से समतुल्य डिप्लोमा।
- विद्युत इंजीनियर:** राज्य/केन्द्रीय सरकार द्वारा मान्यता प्राप्त संस्थान/पौलिटैक्निक से विद्युत इंजीनियर डिप्लोमा।
- इलैक्ट्रॉनिक इंजीनियर :** राज्य/केन्द्रीय सरकार द्वारा मान्यता प्राप्त संस्थान/पौलिटैक्निक से इलैक्ट्रॉनिक इंजीनियर में डिप्लोमा।
- यांत्रिक ट्रेडमेन:** राज्य/केन्द्रीय सरकार द्वारा मान्यता प्राप्त संस्थान से सुसंगत ट्रेड में आई. टी. आई. डिप्लोमा।
- विद्युत ट्रेडमेन:** राज्य/केन्द्रीय सरकार से मान्यता प्राप्त संस्थान से इलैक्ट्रेशियन के ट्रेड में आई. टी. आई. डिप्लोमा।
- ग्राहक सेवा कार्यकारी:** कम से कम पांच ग्राहक सेवा कार्यकारी, जो राज्य/केन्द्रीय सरकार द्वारा मान्यता प्राप्त संस्थान/विश्वविद्यालय से किसी भी विद्याशाखा में स्नातक हों।

7. **मार्शल:** कम से कम दस मार्शल जिन्होंने राज्य/केन्द्रीय सरकार द्वारा मान्यता प्राप्त संस्थान/बोर्ड से दसवीं या इससे उपर की परीक्षा उत्तीर्ण की हों ।

8. **ग्राउंड प्रबन्धन कर्मचारिवृंद:** कम से कम दस कार्मिक, जो राज्य/केन्द्रीय सरकार द्वारा मान्यता प्राप्त संस्थान/बोर्ड से 10+2 उत्तीर्ण हों ।

6. **छोटा सामान.**—(1) संप्रवर्तक कंपनी यात्रियों को छोटे सामान जैसे ब्रीफ केस या हाथ में लेने वाले बैग ( हैडबैग) अपने साथ निःशुल्क वहन करने हेतु अनुज्ञात करेगी ।

(2) संप्रवर्तक कंपनी यात्रियों के किसी व्यक्तिगत सामान की किसी क्षति के लिए उत्तरदायी नहीं होगी और वे आकाशी रज्जूमार्ग पर यात्रा के दौरान स्वयं अपने सामान का ध्यान रखेंगे ।

(3) यदि संप्रवर्तक कंपनी के किसी कर्मचारी को आकाशी रज्जूमार्ग पर यात्रा करने वाले किसी यात्री पर संदेह हो कि वह किसी ऐसे माल का, जो उप विधि 3 (घ) के अनुसार प्रतिपिद्ध है, वहन कर रहा है, तो संप्रवर्तक कंपनी के कर्मचारी को यात्री द्वारा अपने सामान की तलाशी लेने के लिए अनुज्ञात किया जाएगा ।

7. **संप्रवर्तक कम्पनी के कर्मचारी का आचरण.**—(1) संप्रवर्तक कम्पनी का प्रत्येक कर्मचारी, यात्रियों से विनम्रता से पेश आएगा ।

(2) संप्रवर्तक कम्पनी का प्रत्येक कर्मचारी अपनी कर्तव्याविधि के दौरान मादक पेय या औषधियों से सम्बन्धित किसी विधि का सर्वथा पालन करेगा ।

(3) संप्रवर्तक कम्पनी का प्रत्येक कर्मचारी इन उप-विधियों के उपबन्धों का सर्वथा पालन करेगा और यह भी सुनिश्चित करेगा कि उप-विधियों का किसी व्यक्ति द्वारा उल्लंघन न हो ।

(4) किसी सेवक द्वारा उप-विधियों के भंग की दशा में संप्रवर्तक कम्पनी कार्य के लिए उत्तरदायी सेवक के एक मास के वेतन से अनधिक रकम अधीन और उपयुक्त कार्रवाई कर सकेगी ।

8. **आकाशी रज्जूमार्ग के प्रचालन का समय.**—रज्जूमार्ग प्रतिदिन सामान्यतः प्रातः 9:30 पूर्वाह्न से सुयस्ति तक चलाया जाएगा जिसे आकाशी रज्जूमार्ग स्टेशन के सूचना पट पर प्रदर्शित किया जाएगा ।

9. **आकाशी रज्जूमार्ग के प्रचालन लिए प्रयुक्त की जाने वाली शक्ति.**—(1) आकाशी रज्जूमार्ग का प्रचालन विद्युत शक्ति द्वारा किया जाएगा विद्युत के बन्द हो जाने अनुपलब्धता पर, आकाशी मार्ग का प्रचालन डीजल इंजन बैक अप द्वारा किया जाएगा । इसके अतिरिक्त, किसी बचाव कार्य के लिए कुशल कर्मचारिवृंद सहित बचाव इंजन हर समय तैयार रखना होगा ।

(2) संप्रवर्तक आकाशी रज्जूमार्ग के अनुरक्षण या बन्द रहने की अवधि के दौरान सम्प्रवर्तक आकाशी रज्जूमार्ग के बन्द रहने और पुनः खोलने के सम्बन्ध में क्षेत्र के प्रमुख समाचार पत्रों और स्थानीय समाचार पत्रों में विज्ञापन द्वारा निरीक्षक, रज्जूमार्ग और जनता को सूचित करेगा ।

(10) **दुर्घटना की दशा में प्रतिकर.**—(1) आकाशी रज्जूमार्ग के प्रयोग या प्रचालन के कारण हुई दुर्घटना से किसी व्यक्ति की मृत्यु या स्थायी विकलांगता की दशा में, ऐसी मृत्यु या विकलांगता के सम्बन्ध में प्रतिकर संप्रवर्तक कम्पनी या बीमा कम्पनी, यदि वीमाकृत हो, द्वारा संदत्त किया जाएगा प्रतिकर की न्यूनतम रकम का संदाय निम्न प्रकार से होगा:—

(क) बारह वर्ष की आयु से कम बालक 1,00,000/रुपये (एक लाख रुपये केवल)

(ख) बारह वर्ष आयु से अधिक का कोई व्यक्ति 5,00,000/रुपये (पांच लाख रुपये केवल)

यदि घोर क्षति हो ।

(2) आकाशी रज्जूमार्ग की यात्रा के दौरान लघु क्षति के लिए संप्रवर्तक कम्पनी के कर्मचारियों द्वारा सामान्य प्राथमिक-उपचार उपलब्ध कराया जाएगा ।

(3) इन दरों का पुनर्विलोकन समय समय पर अधिनियम के उपबंधों के अधीन किया जाएगा ।

**(11) प्रभारित की जाने वाली अधिकतम दरें और अन्य शर्तें.**—(1) संप्रवर्तक कम्पनी द्वारा प्रभावित की जाने वाली अधिकतम दरें संप्रवर्तक कम्पनी द्वारा प्रभारित की जाएगी और हिमाचल प्रदेश रज्जूमार्ग अधिनियम, 1968 के उपबंधों के अधीन विशेषज्ञ समिति का सिफारिशों पर राज्य सरकार द्वारा नियत की जाएगी। तथा किसी सहजदृश स्थान पर नोटिस बोर्ड पर प्रदर्शित की जाएगी।

(2) एक बार बेचा गया टिकट साधारण परिस्थितियों में वापिस नहीं होगा। प्रतिदाय केवल तभी किया जाएगा यदि आकाशी रज्जूमार्ग का प्रचालन संप्रवर्तक कम्पनी के नियन्त्रण से बाहर किसी कारण से नहीं हो रहा है ।

(3) टिकट काउंटर और टिकटों का विक्रय रज्जूमार्ग का प्रचालन के बन्द होने के निश्चित समय से एक घण्टा पूर्व सामान्यतः बन्द कर दिया जाएगा और इसे काउंटर के सूचना पट पर प्रदर्शित किया जाएगा।

(4) संप्रवर्तक कम्पनी, केबिनों और स्वागत कक्ष क्षेत्र का साफ सुथरा रखने के लिए पर्याप्त प्रबन्ध करेगी और ऊपरी और निचले स्टेशनों पर बिजली, शौचालय तथा पीने के पानी की उचित सुविधाएँ उपलब्ध करवाएगी।

(5) संप्रवर्तक कम्पनी दिव्यांगजनों को ऊपरी और निचले स्टेशनों पर चढ़ने और उतरने में सहायता करने के लिए विशेष कुर्सी की व्यवस्था करेगी ।

(6) संप्रवर्तक कम्पनी, दिव्यांगजनों को बिना बारी के टिकट जारी करने के लिए व्यवस्था करेगी ताकि उन्हें साधारण लाईन में खड़ा न होना पड़े ।

(7) संप्रवर्तक कम्पनी, दोनों स्टेशनों पर अग्नि शमन उपस्करों को प्रतिष्ठापित करेगी ।

(8) यात्रियों को रज्जूमार्ग के परिसर में और केबिनों में यात्रा करते समय कोई ऐसा कार्य करने की अनुमति नहीं होगी जिससे जनसाधारण को किसी प्रकार की परेशानी हो ।

**12. उप विधियों के उल्लंघन के लिए.**—(1) यात्री और संप्रवर्तक कम्पनी और उसके सेवक इन उप विधियों और हिमाचल प्रदेश रज्जूमार्ग अधिनियम, 1968 के उपबन्धों का पालन करने हेतु बाध्य होंगे।

(2) कोई व्यक्ति जो इन उप-विधियों में किसी भी उप-बन्ध का उल्लंघन करेगा वह पचास रुपये से अनधिक राशि के जुर्माने का दायी होगा ।

(3) यात्री सुरक्षा प्रयोजनों के लिए गोंडोला में चढ़ने उतरने और सवारी करने के लिए भूतल कर्मचारिवृन्द के विदेशों का पालन करने के लिए बाध्य होंगे यात्रियों को निर्बंधित/प्रदेश क्षेत्र में प्रवेश करने हेतु अनुज्ञात नहीं किया जाएगा और सुरक्षा नियमों के किसी उल्लंघन के लिए यात्री अधिनियम की धारा 34,35,36 और 37 के अधीन कार्रवाई के लिए दायी होंगे ।

**13. शिकायत निवारण.**—कोई भी शिकायत, निवारण हेतु, संप्रवर्तक कम्पनी के आकाशी रज्जूमार्ग के भारसाधक सेवक के साथ-साथ निरीक्षण रज्जूमार्ग सह-कार्यकारी इंजीनियर; यांत्रिक मण्डल हिमाचल प्रदेश लोक निर्माण विभाग, ढली को निर्देश की जा सकती है। उपरोक्त कर्मचारियों के संपर्क व्योरे नोटिस बोर्ड पर प्रदर्शित किए जाएंगे।

आदेश द्वारा,  
नरेन्द्र चौहान,  
अतिरिक्त मुख्य सचिव (लोक निर्माण)।

*[Authoritative English Text of this Department Notification No. PBW (B&R) (B)(8)2(1)2000 dated 20-06-2017 as required under clause(3) of Article 348 of the constitution of India.]*

## PUBLIC WORKS DEPARTMENT

### NOTIFICATION

*Shimla-2, the 20<sup>th</sup> June, 2017*

**No. PBW(B&R)(B)(8)2(1)2000.**—WHEREAS, Governor and M/S Jagson International Ltd., a company in-corporated under the provisions of the Companies Act, 1956, having its registered office at 3<sup>rd</sup> Floor, Vandna Building, 11 Tolstoy Marg, New Delhi 110001, has entered into a concession agreement on 16<sup>th</sup> March, 2006 with the Governor of Himachal Pradesh through Pr. Secretary (Tourism), to the Government of Himachal Pradesh for development of Aerial Ropeway from Shivalik Hotel to Jakhu Temple Shimla on Build, Own, Operate and Transfer (“BOOT”) basis at Shimla;

And WHEREAS, the M/S Jagson International Ltd. Company has framed draft bye-laws under section 27 of the Himachal Pradesh Aerial Ropeways Act, 1968 and the same are published in pursuance of section 27(3) of the Act ibid in two daily news papers namely, the "Business Standard" and "Naya India" on 29-11-2016 and 04-12-2016, for information of the general public;

And WHEREAS, the Inspector of Aerial Ropeways, Shimla has scrutinized the above draft bye-laws as per the requirement of rule 12 of the Himachal Pradesh Aerial Ropeways Rules, 1972 and forwarded the same to the State Government for the approval and publication in the Official Gazette;

Now, THEREFORE, in exercise of powers conferred by sub-section (3) of section 27 of the Act ibid, the Governor, Himachal Pradesh is pleased to approve the following, bye-laws framed by M/S Jagson International Ltd. namely:—

### BYE- LAWS

**1. Short title and Commencement.**—(1) These Bye-Laws may be called the Bye-Laws of Jakhu Aerial Ropeway, Shimla, 2017.

(2) These bye-Laws shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

**2. Definitions.**—(1) In these Bye-Laws, unless there is anything repugnant in the subject or context.

- (a) “Act” means the Himachal Pradesh Aerial Ropeways Act, 1968 (Act No. 7 of 1969);
- (b) “Cabin” means carrier used for carrying the passengers on aerial ropeway; and
- (c) “promoter company” means M/S Jagson International Ltd., 3<sup>rd</sup> Floor, Vandna Building, 11 Tolstoy Marg, New Delhi 110001.

(2) The words and expressions used herein but not defined shall have the same meanings respectively assigned to them in the Act and Rules made there under.

**3. Manner and other conditions to regulate.**—The manner and other conditions to regulate the operation of aerial ropeways shall be as under:—

- (a) the speed of the aerial ropeways shall be upto 4 meters per second;

- (b) the maximum weight of passengers including pets to be carried in each cabin shall not exceed 480 Kg. ;
- (c) the maximum number of persons allowed to be carried in each cabin shall be 6 adults;

**Explanation.**—(i) For the purpose of this Bye-Law, 2 children above the age of 3 years upto the age of 12 years shall be counted as one adult, whereas children between 3-12 years of age shall be accommodated to the maximum as limited by the sitting space of the cabin;

- (ii) Children below the age of 3 years shall not be counted for the purpose of maximum number of passengers to be carried in each cabin;
- (d) the passengers shall not be allowed to carry the arms and ammunition as defined under the Arms Act, 1959 and the alcohols/intoxicants while travelling on the ropeways;.
- (e) the passengers shall not be allowed to eat, drink or smoke while travelling on the ropeway; and
- (f) the promoter company may refuse any passenger to ride the cabin if any employee of the company finds that any person is under the influence of any intoxicant or is otherwise physically or mentally unfit to travel on the aerial ropeway or apprehend any danger to himself or the co- passengers or employee(s) of the promoter company.

**4. Servant-in-charge.**—Servant-in-charge or Aerial Ropeway-in-charge may be appointed under the provisioning of the Act by such authority/officer who is competent to do so.

**5. Qualifications of staff.**—The staff to be employed for running and maintenance of aerial ropeways and their qualifications shall be as under:—

- (1) **Mechanical Engineers:** At least Diploma in Mechanical Engineering from a recognized institute/Polytechnic and its equivalent. Diploma in or from the recognized Institute / Polytechnic by the State / Central Government.
- (2) **Electrical Engineer:** Diploma in Electrical Engineering from the recognized Institute / Polytechnic by the State / Central Government.
- (3) **Electronic Engineer:** Diploma in Electronic Engineering from the recognized Institute/ Polytechnic by the State/Central Government.
- (4) **Mechanical Trade Man:** ITI Diploma in relevant trade from recognized Institute by the State/Central Government.
- (5) **Electrical Trade Man:** ITI Diploma in Electrician trade from the State/Central Government recognized Institute.
- (6) **Customer Care Executives:** At least 5 Customer care Executives who are Graduate in any stream from State/Central Government recognized institute / university.
- (7) **Marshals:** At least 10 Marshals who have passed 10<sup>th</sup> or above from the State/Central Government recognized Institute / Board.
- (8) **Ground Handling Staff:** At least 10 personnel's who are 10+2 from the State/Central Government recognized Institute/ Board.

**6. Small Luggage.**—(1) The promoter company shall allow passengers to carry small luggage like brief case or hand bags with them free of charge.

(2) The promoter company shall not be responsible for any loss of personal belongings of the passengers and they will themselves take care of their belongings during travel on the aerial ropeway.

(3) If the employee(s) of the promoter company have any doubt on any passenger travelling on the aerial ropeway that he is carrying some goods which are prohibited as per bye-law 3(d), the employee of the promoter company shall be allowed by the passenger to search his luggage.

**7. Conduct of Promoter's company employee.**—(1) Every employee of the promoter's company shall have to show courtesy to the passengers.

(2) Every employee of the promoter company shall strictly abide by any law relating to intoxicating drinks or drugs during the course of his duties

(3) Every employee of the promoter company shall strictly abide by the provisions of these Bye-Laws and also ensure that the Bye- Laws are not violated by any person.

(4) In case of breach of bye-laws by any servant, the promoter company shall forfeit a sum not exceeding one month pay of the servant responsible for the act and may take further suitable action under the provisions of company or Bye-Laws.

**8. Timing of operation of aerial ropeway.**—The aerial ropeway shall normally be operative from 9.30 A.M. till Sunset every day which shall be displayed on the notice board at the aerial ropeway station.

**9. Power to be used for operation of the Aerial Ropeway.**—(1) The power to be used for operating the aerial ropeway shall be electrical power. In case of break down/non availability of electrical power supply, the aerial ropeway shall be operated with the Diesel Engine back up. In addition, rescue Engine along with skilled staff to be kept ready at all times for any rescue operations.

(2) During the maintenance or break down period of aerial ropeway, the promoter shall inform the Inspector Ropeways and public by advertising in the leading newspapers of the region and local newspapers in respect of the closure and re-opening of the aerial ropeway.

**10. Compensation in case of accident.**—(1) In case of death or permanent disablement of person(s) resulting from any accident arising out of the use or operation of the aerial ropeway, the compensation in respect of such death or permanent disablement shall be paid by the promoter company or Insurance company, if insured. The minimum amount of compensation shall be payable as under:—

(a) **Children below 12 years:** Rs. 1,00,000/- (Rupees one Lakh only)

(b) **any person above 12 Year):** Rs. 5,00,000/- (Rupees Five Lakh Only)

If previous injury.

(2) For minor injuries during the aerial ropeway journey, normal first aid shall be provided by the employee of promoter company.

(3) These rates shall be reviewed from time to time under the provisions of the Act.

**11. Maximum rates to be charged and other conditions.**—(1) The maximum rates to be charged by the promoter company shall be proposed by the promoter company and shall be fixed by the State Government on the recommendations of Expert Committee under the provisions of the Himachal Pradesh Ropeways Act, 1968 and shall be displayed on the Notice Board at prominent place.

(2) Ticket once sold will not be re-fundable under normal circumstances. The refund will only be granted in case or any reason beyond the control of the promoter company.

(3) Ticket counters and sale of tickets shall normally be closed one hour before the closing time of aerial ropeway operation schedule and the same shall be displayed on the Notice Board at the counter.

(4) The promoter company shall make the adequate arrangements for keeping cabins and reception area clean and shall provide proper lighting, toilet, drinking water facilities at upper and lower stations.

(5) The promoter company shall provide a special chair at upper and lower stations to help the persons with disability, in embarking and dis-embarking.

(6) The promoter company shall make provision for issuing out-of turn tickets to persons with disability, so that they are not required to stand in normal queue.

(7) The promoter company shall install Fire-Fighting equipments at both the stations.

(8) Passengers shall not be allowed to resort to any activity causing nuisance to public in the premises of the ropeway and while travelling in the cabins.

**12. Penalty for contravention of Bye-Laws.**—(1) The passenger and the promoter company and its servants shall be bound to abide by these Bye-Laws and provisions of the Himachal Pradesh Ropeway Act, 1968.

(2) Any person who contravenes any of the provisions of these Bye-Laws shall be liable to fine which may extend to any sum not exceeding fifty rupees.

(3) The passenger(s) will be bound to follow the directions of the Ground Staff for embarkation, disembarkation and riding in the Gondolas for safety purposes. Passengers shall not be allowed to enter, restricted/no entry area and for any contravention of the safety rules, the passengers shall be liable for action under sections 34, 35, 36 and 37 of the Act.

**13. Grievance redressal.**—Any Grievance redressal can be referred to Servant-in-Charge of the Aerial Ropeway of the promoter company as well as Inspector, Ropeway-cum-Executive Engineer, Mechanical Division, HPPWD, Dhalli. The contact details of the above officials shall be displayed on the Notice Board.

By order,  
NARINDER HAUHAN,  
Addl. Chief Secretary(PW).



**In the Court of Shri Arindam Chaudhary, IAS, Marriage Officer-cum-S.D.M.,  
Hamirpur, Himachal Pradesh**

In the matter of :

Virender Kumar aged 22 years s/o Late Shri Piar Chand, r/o Village & P.O. Kakkar, Tehsil Tauni Devi, District Hamirpur (H.P.).

and

Deepika Sharma aged 19 years d/o Shri Narinder Sharma, r/o Village Anji, P.O. Chaili, Tehsil & District Hamirpur (H.P.) . . *Applicants.*

*Versus*

General Public

Subject.— Notice of the Intended Marriage.

Virender Kumar and Deepika Sharma have filed an application under Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they intend to solemnized marriage within three calendar months.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 23-06-2017. The objection received after 23-06-2017 will not be entertained and marriage will be registered accordingly.

Issued today on 22-04-2017 under my hand and seal of the court.

Seal.

Sd/-  
*Marriage Officer-cum-Sub Divisional Magistrate,  
Hamirpur (H.P.).*

**In the Court of Executive Magistrate Dharamshala, Tehsil Dharamshala,  
District Kangra H.P.**

1. Shri Prem Lal s/o Shri Man Singh Verma, r/o Upper Barol, Tehsil Dharamshala, District Kangra.
2. Smt. Raj Kumari d/o Sh. Ashok Kumar, r/o Gadrana, Tehsil Baroh, District Kangra, H.P.

*Versus*

1. The General Public,
2. Commissioner Municipal Corporation Dharamshala

Whereas the above named applicants have made an application under section 8(4) of the H.P. Registration of Marriages Act, 1996 alongwith an affidavit stating therein that they have

solemnized their marriage on 08-11-2016 at Upper Barol but has not been found entered in the records of the Registrar of marriages *i.e.* Commissioner Municipal Corporation Dharamshala;

And whereas, they have also stated that they were not aware of the laws of the registration of marriages with the Registrar of Marriages and now, therefore necessary orders for the registration of their marriage be passed so that their marriage is registered by the concerned authority.

Now, therefore, objections are invited from the general public that if anyone has any objection regarding the registration of the marriage of the above named applicants, then they should appear before the court of undersigned on 22-06-2017 at Tehsil Office Dharamshala at 10.00 A.M. either personally or through their authorized agent.

In the event of their failure to do so orders shall be passed *ex-parte* against the respondents for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the court on this 16-05- 2017.

Seal.

Sd/-

*Executive Magistrate,  
Tehsil Dharamshala, District Kangra, H.P.*

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**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,  
District Mandi, H. P.**

In the matter of :—

1. Shri Aman Guleria s/o Shri Mohinder Singh Guleria, r/o H. No. 91/6, Ward No. 6, Block No. 17, Samkhetar Street Mandi, H.P.
2. Smt. Vagisdha Barwal d/o Balbir Singh Barwal, r/o Village Panjehati, P.O. Talyahar, Tehsil Padhar, District Mandi, H. P. . . Applicants.

*Versus*

General Public

Subject.—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Shri Aman Guleria s/o Shri Mohinder Singh Guleria, r/o H. No. 91/6, Ward No. 6, Block No. 17, Samkhetar Street Mandi, H.P. Smt. Vagisdha Barwal d/o Balbir Singh Barwal, r/o Village Panjehati, P.O. Talyahar, Tehsil Padhar, District Mandi, H. P. (at present wife of Shri Aman Guleria s/o Shri Mohinder Singh Guleria, r/o H. No. 91/6, Ward No. 6, Block No. 17, Samkhetar Street Mandi, H.P.) have filed an application along with affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 26-05-2017 according to Hindu rites and customs at Vipasha Sadan Mandi, H.P. and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 02-07-2017 after that no objection will be entertained and marriage will be registered.

Issued today on 2<sup>nd</sup> day of June, 2017 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,  
Sadar, District Mandi (H.P.).*

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**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,  
District Mandi, H. P.**

In the matter of :—

1. Shri Ramesh Chand s/o Brij Lal, r/o Village Darbathu, P.O. Lohara, Tehsil Balh, District Mandi, H.P.
2. Smt. Manju Devi d/o Kashmir Singh, r/o Village Badresa, P.O. Brang, Tehsil Sarkaghat, District Mandi, H. P. . . Applicants.

*Versus*

General Public

Subject.—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Shri Ramesh Chand s/o Brij Lal, r/o Village Darbathu, P.O. Lohara, Tehsil Balh, District Mandi, H.P. and Smt. Manju Devi d/o Kashmir Singh, r/o Village Badresa, P.O. Brang, Tehsil Sarkaghat, District Mandi, H. P. (at present wife of Shri Ramesh Chand s/o Brij Lal, r/o Village Darbathu, P.O. Lohara, Tehsil Balh, District Mandi, H.P.) have filed an application along with affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 8-05-2017 according to Hindu rites and customs at their respective houses and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 02-07-2017 after that no objection will be entertained and marriage will be registered.

Issued today on 2<sup>nd</sup> day of June, 2017 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,  
Sadar, District Mandi (H.P.).*

ब अदालत श्री मोही राम चौहान, कार्यकारी दण्डाधिकारी नेरूवा, जिला शिमला, हिमाचल प्रदेश

श्री भागमल पुत्र श्री सुख राम, निवासी पवान, डा0 पवान शिमला, हिमाचल प्रदेश

बनाम

आम जनता

विषय.—जन्म रजिस्टर में बच्चों के नाम दर्ज करने बारे।

हर खास व आम जनता को इस इशतहार के माध्यम से सूचित किया जाता है कि श्री सुख राम ने अदालत एक आवेदन—पत्र प्रस्तुत किया है कि उसने अपनी पुत्र व पुत्री की जन्म तिथि व नाम का इन्द्राज जन्म रजिस्टर ग्राम पंचायत पवान में दर्ज नहीं करवाया है जिसे दर्ज करवाना चाहता है। जो कि निम्न प्रकार से है:—

#### 1. अभस ठाकुर की जन्म तिथि 31-12-2012

अतः ग्राम पंचायत पवान, तहसील नेरूवा, जिला शिमला, हि0 प्र0 की जनता को बजरिया इशतहार सूचित किया जाता है कि यदि किसी को उपरोक्त पंजीकरण बारे कोई उजर व एतराज हो तो वह अपना उजर असालतन या वकालतन जैसी भी सूरत हो दिनांक 28-06-2017 को अदालत हजा में हाजर होकर पेश करें। दिगर सूरत में आवेदन पत्र में जन्म पंजीकरण के आदेश पारित करके रजिस्ट्रार जन्म एवं मृत्यु ग्राम पंचायत को आदेश पारित कर दिये जायेंगे।

आज दिनांक 15-06-2017 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

मोही राम चौहान,  
कार्यकारी दण्डाधिकारी नेरूवा,  
जिला शिमला (हि0 प्र0)।